



## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-977]

#### High Pressure Steel Cylinders from the People's Republic of China: Preliminary Determination of Sales at Less than Fair Value

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: [Insert date of publication in the Federal Register.]

SUMMARY: The Department of Commerce ("Department") preliminarily determines that high pressure steel cylinders ("steel cylinders") from the People's Republic of China ("PRC") are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("Act"). The estimated margins of sales at LTFV are shown in the "Preliminary Determination" section of this notice.

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#### SUPPLEMENTAL INFORMATION:

##### Initiation

On May 11, 2011, the Department received a petition concerning imports of steel cylinders from the PRC filed in proper form by Norris Cylinder Company ("Petitioner").<sup>1</sup>

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<sup>1</sup> See Petitions for the Imposition of Antidumping and Countervailing Duties: High Pressure Steel Cylinders from the People's Republic of China filed on May 11, 2011 ("Petition").

On June 8, 2011, the Department initiated an antidumping duty (“AD”) investigation on steel cylinders from the PRC.<sup>2</sup> Additionally, in the Initiation Notice, the Department notified parties of the application process by which exporters and producers may obtain separate-rate status in non-market economy (“NME”) investigations such as this investigation.<sup>3</sup>

On June 27, 2011, the United States International Trade Commission (“ITC”) issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the PRC of steel cylinders. The ITC’s preliminary determination was published in the Federal Register on July 1, 2011.<sup>4</sup>

#### Period of Investigation

The period of investigation (“POI”) is October 1, 2010, through March 31, 2011.<sup>5</sup>

#### Scope of the Investigation

The merchandise covered by the scope of the investigation is seamless steel cylinders designed for storage or transport of compressed or liquefied gas (“high pressure steel cylinders”). High pressure steel cylinders are fabricated of chrome alloy steel including, but not limited to, chromium-molybdenum steel or chromium magnesium steel, and have permanently impressed into the steel, either before or after importation, the symbol of a U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (“DOT”) approved high

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<sup>2</sup> See High Pressure Steel Cylinders from the People’s Republic of China: Initiation of Antidumping Duty Investigation, 76 FR 33213 (June 8, 2011) (“Initiation Notice”).

<sup>3</sup> See id., 76 FR at 33216-33217.

<sup>4</sup> See Investigation Nos. 701-TA-480 and 731-TA-1188; Preliminary, High Pressure Steel Cylinders from China, 76 FR 38697 (July 1, 2011).

<sup>5</sup> See 19 CFR 351.204(b)(1).

pressure steel cylinder manufacturer, as well as an approved DOT type marking of DOT 3A, 3AX, 3AA, 3AAX, 3B, 3E, 3HT, 3T, or DOT-E (followed by a specific exemption number) in accordance with the requirements of sections 178.36 through 178.68 of Title 49 of the Code of Federal Regulations, or any subsequent amendments thereof. High pressure steel cylinders covered by the investigation have a water capacity up to 450 liters, and a gas capacity ranging from 8 to 702 cubic feet, regardless of corresponding service pressure levels and regardless of physical dimensions, finish or coatings.

Excluded from the scope of the investigation are high pressure steel cylinders manufactured to UN-ISO-9809-1 and 2 specifications and permanently impressed with ISO or UN symbols. Also excluded from the investigation are acetylene cylinders, with or without internal porous mass, and permanently impressed with 8A or 8AL in accordance with DOT regulations.

Merchandise covered by the investigation is classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) under subheading 7311.00.00.30. Subject merchandise may also enter under HTSUS subheadings 7311.00.00.60 or 7311.00.00.90. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the investigation is dispositive.

#### Scope Comments

In accordance with the preamble to the Department’s regulations, the Department sets aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the Initiation Notice.<sup>6</sup> No interested party submitted scope comments.

#### Respondent Selection

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<sup>6</sup> See Antidumping Duties; Countervailing Duties, 62 FR 27296, 27323 (May 19, 1997); see also Initiation Notice, 76 FR at 33213-33214.

In the Initiation Notice, the Department stated its intent to limit the number of quantity and value (“Q&V”) questionnaires sent to exporters or producers to those companies identified in the Petition.<sup>7</sup> On June 1, 2011, the Department sent Q&V questionnaires to the ten companies identified in the Petition as exporters or producers of steel cylinders from the PRC.<sup>8</sup> The Department also posted the Q&V questionnaire for this investigation on its website at <http://ia.ita.doc.gov/ia-highligHTSUS-and-news.html>. Of the ten companies to which the Department sent Q&V questionnaires, the Department received two Q&V responses.<sup>9</sup> In addition, the Department also received two unsolicited Q&V responses.<sup>10</sup>

Based on the responses submitted to the Department, on August 25, 2011, the Department selected BTIC (“Respondent”) as the only mandatory respondent for individual examination in this investigation. BTIC accounts for the largest volume of subject merchandise sold to the United States during the POI that can be reasonably examined.<sup>11</sup>

On August 29, 2011, Zhejiang Jindun submitted a letter requesting treatment as a voluntary respondent. On August 30, 2011, Petitioner submitted a letter opposing Zhejiang Jindun’s request for voluntary treatment. On September 2, 2011, the Department issued a letter providing a schedule for voluntary responses to the Department’s initial NME Questionnaire.<sup>12</sup> However, the letter also stated that the schedule does not indicate that the Department will accept a voluntary respondent in this investigation.<sup>13</sup> Given the Department’s current resource

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<sup>7</sup> See Initiation Notice, 76 FR at 33216.

<sup>8</sup> See Letter from the Department to All Interested Parties, dated June 1, 2011.

<sup>9</sup> The Department received responses from Beijing Tianhai Industry Co., Ltd. (“BTIC”) and Zhejiang Jindun Pressure Vessel Co., Ltd. (“Zhejiang Jindun”).

<sup>10</sup> The Department received unsolicited Q&V responses from Shanghai J.S.X. International Trading Corporation and Shijiazhuang Enric Gas Equipment Co., Ltd.

<sup>11</sup> See “Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from James C. Doyle, Director, Office 9; Antidumping Duty Investigation of High Pressure Steel Cylinders from the People’s Republic of China: Respondent Selection,” (“Respondent Selection Memo”) dated August 25, 2011.

<sup>12</sup> See Letter from the Department Re: “Antidumping Duty Investigation of High Pressure Steel Cylinders from the People’s Republic of China (“PRC”): Schedule for Voluntary Responses to the Department’s Initial Questionnaire,” dated September 2, 2011.

<sup>13</sup> See id.

constraints, we are not selecting a voluntary respondent at this time because to do so would be unduly burdensome and would inhibit the timely completion of this investigation.<sup>14</sup> As stated in the Respondent Selection Memo, the Department is conducting numerous, concurrent, antidumping proceedings which limits the number of analysts that can be assigned to this investigation.

#### Questionnaire

On July 29, 2011, the Department issued to BTIC the NME AD questionnaire with product characteristics used in the designation of CONNUMs and assigned to the merchandise under consideration. Between August 26, 2011, and November 10, 2011, BTIC submitted responses to the Department's original and supplemental sections A, C, and D questionnaires. In addition, between September 14, 2011 and October 5, 2011, Zhejiang Jindun also submitted responses to the Department's original section A, C and D questionnaires.

#### Surrogate Country Comments

On August 29, 2011, the Department determined that Colombia, Indonesia, the Philippines, South Africa, Thailand, and Ukraine are countries whose per capita gross national income are comparable to the PRC in terms of economic development.<sup>15</sup> On September 7, 2011, the Department requested comments from the interested parties regarding the selection of a surrogate country. On September 20, the Department extended the deadline for the submission of surrogate country and factor valuation comments to September 26, 2011, and October 7, 2011, respectively. For a detailed discussion of the selection of the surrogate country, see "Surrogate Country" section below.

#### Surrogate Value Comments

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<sup>14</sup> See section 782(a)(2) of the Act.

<sup>15</sup> See "Memorandum from Carole Showers, Director, Office of Policy, to Matthew Renkey, Acting Program Manager, Office 9: Antidumping Investigation of High Pressure Steel Cylinders from the People's Republic of China (PRC): Request for a List of Surrogate Countries for an Antidumping Duty Investigation of High Pressure Steel Cylinders from the People's Republic of China ('China')," dated August 29, 2011 ("Surrogate Country List").

On September 29, 2011, and October 17, 2011, the Department extended the deadline for the submission of surrogate value (“SV”) comments to October 18, 2011 and October 24, 2011, respectively. On October 24, 2011, Petitioner and BTIC submitted surrogate factor valuation comments and data. On November 2, 2011, November 14, 2011, and November 22, 2011, Petitioner and BTIC submitted rebuttal surrogate factor valuation comments.

#### Separate Rate Applications

Between August 4, 2011, and August 26, 2011, the Department received separate rate applications from four companies.<sup>16</sup> See the “Separate Rates” section below for the full discussion of the treatment of the separate rate applicants.

#### Postponement of Preliminary Determination

On September 8, 2011, Petitioner filed a timely request to postpone the issuance of the preliminary determination by 60 days. On September 27, 2011, the Department published in the Federal Register a notice postponing the preliminary antidumping duty determination for this investigation of steel cylinders from the PRC.<sup>17</sup>

#### Non-Market-Economy Country

For purposes of initiation, Petitioners submitted LTFV analyses of the PRC as an NME country.<sup>18</sup> The Department considers the PRC to be an NME country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the Department.<sup>19</sup> No party has challenged the

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<sup>16</sup> The following companies filed separate-rate applications: BTIC; Shanghai J.S.X. International Trading Corporation; Zhejiang Jindun; and Shijiazhuang Enric Gas Equipment Co., Ltd. (these companies, exclusive of BTIC, are collectively referred to as, “Separate Rate Respondents”).

<sup>17</sup> See High Pressure Steel Cylinders From the People’s Republic of China: Postponement of Preliminary Determination of Antidumping Duty Investigation, 76 FR 59658 (September 27, 2011).

<sup>18</sup> See also Initiation Notice, 76 FR at 33215.

<sup>19</sup> See Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People’s Republic of China, 72 FR 30758, 30760 (June 4, 2007), unchanged in Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People’s Republic of China, 72 FR 60632 (October 25, 2007).

designation of the PRC as an NME country in this investigation. Therefore, we continue to treat the PRC as an NME country for purposes of this preliminary determination.

### Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base normal value (“NV”), in most circumstances, on the NME producer’s factors of production (“FOP”), valued in a surrogate market economy (“ME”) country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.<sup>20</sup> Once the Department has identified the countries that are economically comparable to the PRC, it identifies those countries which are significant producers of comparable merchandise. From the list of countries which are both economically comparable and significant producers and the Department will then select a primary surrogate country based upon whether the data for valuing FOPs are both available and reliable.

### *Economic Comparability*

As explained in our Surrogate Country List, the Department considers Colombia, Indonesia, the Philippines, South Africa, Thailand, and Ukraine all comparable to the PRC in terms of economic development.<sup>21</sup> Therefore, we consider all six countries as having satisfied this prong of the surrogate country selection criteria.<sup>22</sup> Petitioner argued that India should also be considered economically comparable to the PRC and considered

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<sup>20</sup> See Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (“Policy Bulletin”) available on the Department’s website at <http://ia.ita.doc.gov/policy/index.html>.

<sup>21</sup> See Surrogate Country List.

<sup>22</sup> See section 773(c)(4)(A) of the Act.

a potential surrogate country.<sup>23</sup> While we recognize Petitioner has challenged the Department's reliance on absolute GNI to establish the list of economically comparable countries, our practice to rely on absolute GNI because, as explained in Magnesium from China<sup>24</sup>

The Department finds that the selection of the range of economically comparable countries based on absolute GNIs is reasonable and consistent with the Act. The Department has a long-standing and predictable practice of selecting economically comparable countries on the basis of absolute GNI. Moreover, Petitioner has failed to provide sufficient reasoning to demonstrate why the Department should use relative GNI as a basis for defining economic comparability . . .

Therefore, the Department does not find persuasive Petitioner's argument regarding the relative similarity in difference in GNI between South Africa and India. Furthermore, we note that in Steel Wheels<sup>25</sup> the Department stated:

{U}nless we find that all of the countries determined to be equally economically comparable are not significant producers of comparable merchandise, do not provide a reliable source of publicly available surrogate data or are unsuitable for use for other reasons, we will rely on data from one of these countries.

Because the Department finds that one of these countries meets the selection criteria, as explained below, the Department is not considering India as the primary surrogate country.

#### *Producers of Identical or Comparable Merchandise*

Section 773(c)(4)(B) of the Act requires the Department to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor the Department's regulations provide further guidance on what may be considered comparable

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<sup>23</sup> See Petitioner's Supplemental Section A Response for Beijing Tianhai Industry Co., Ltd.: Antidumping Duty Investigation on High Pressure Steel Cylinders from the People's Republic of China, dated October 14, 2011.

<sup>24</sup> See Magnesium Metal From the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review of the Antidumping Duty Order, 75 FR 65450 (October 25, 2010) and accompanying Issues and Decision Memorandum at Comment 4.

<sup>25</sup> See Certain Steel Wheels From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination, 76 FR 677703 (November 2, 2011) ("Steel Wheels").



merchandise. Given the absence of any definition in the statute or regulations, the Department looks to other sources such as the Policy Bulletin for guidance on defining comparable merchandise.<sup>26</sup> The Policy Bulletin states that “the terms ‘comparable level of economic development,’ ‘comparable merchandise,’ and ‘significant producer’ are not defined in the statute.” The Policy Bulletin further states that “in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise.” Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.<sup>27</sup> Further, when selecting a surrogate country, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry.<sup>28</sup> “In cases where identical merchandise is not produced, the team must determine if other merchandise that is comparable is produced. How the team does this depends on the subject merchandise.”<sup>29</sup> In this regard, the Department recognizes that any analysis of comparable merchandise must be done on a case-by-case basis:

In other cases, however, where there are major inputs, i.e., inputs that are specialized or dedicated or used intensively, in the production of the subject merchandise, e.g., processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.<sup>30</sup>

Further, the statute grants the Department discretion to examine various data sources for determining the best available information.<sup>31</sup> Moreover, while the legislative history provides that the term “significant producer” includes any country that is a significant “net exporter,”<sup>32</sup> it

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<sup>26</sup> See Policy Bulletin.

<sup>27</sup> The Policy Bulletin also states that “if considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise,” at note 6.

<sup>28</sup> See Sebacic Acid from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 62 FR 65674 (December 15, 1997) and accompany Issues and Decision Memorandum at Comment 1 (to impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute).

<sup>29</sup> See Policy Bulletin, at 2.

<sup>30</sup> See id., at 3.

<sup>31</sup> See section 773(c) of the Act; Nation Ford Chem. Co. v. United States, 166 F.3d 1373, 1377 (Fed. Cir. 1999).

<sup>32</sup> See Conference Report accompanying H.R. 3, the 1988 Omnibus Trade & Competitiveness Act, H. Rep. No.

does not preclude reliance on additional or alternative metrics. To evaluate this factor we obtained export data using the GTA for HTSUS 7311.00: Containers for Compressed or Liquefied Gas of Iron or Steel, which is comparable to the merchandise under consideration because high pressure steel cylinders fall within this HTSUS category and this merchandise has a similar end-use to scope merchandise. The GTA data demonstrate that all six of the countries identified in the Surrogate Country List were exporters of comparable merchandise during the POI.<sup>33</sup> The Department notes that India is also an exporter of comparable merchandise as demonstrated by GTA data, and India is also a producer of identical and comparable merchandise as evidenced by the financial statements which Petitioner has placed on the record.

*Significant Producers of Identical or Comparable Merchandise*

With respect to the criterion of being a significant producer of comparable merchandise, Petitioner submits that, for purposes of the Department's selection of an appropriate surrogate country, India is a producer of identical merchandise; that Indonesia, South Africa, Ukraine, the Philippines, Colombia, and Thailand also are producers of comparable merchandise; that only India, Thailand, and Indonesia are significant producers of comparable merchandise based on global exports.<sup>34</sup>

Respondent proposed that the Department select Ukraine as the primary surrogate country and India as a secondary surrogate country in this investigation. Respondent notes that as the Department included Ukraine in the Surrogate Country List, the Department has already found Ukraine comparable in terms of economic development. Further, Respondent contends that Ukraine is a significant producer of comparable merchandise.<sup>35</sup>

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100-576, at 590 (1988) ("Conference Report").

<sup>33</sup> See Petitioner's High Pressure Steel Cylinders from the People's Republic of China; Petitioner's Comments on Selection of Surrogate Country for Antidumping Investigation, dated September 26, 2011.

<sup>34</sup> See *id.*

<sup>35</sup> See Respondent's First Surrogate Value Submission for Beijing Tianhai Industry Co., Ltd.: Antidumping Duty Investigation on High Pressure Steel Cylinders from the People's Republic of China, dated October 24, 2011, at Exhibits 2A and 2B and November 14, 2011, at page 3.

Respondent also suggests that, consistent with its established practice, the Department should define “significant producer” in this proceeding as a country that has produced comparable merchandise during the relevant period. Consequently, Respondent states that the Department should find that Ukraine is a significant producer of comparable merchandise, based on the data submitted in its comments.

As noted above, Colombia, Indonesia, South Africa, the Philippines, Thailand, Ukraine were exporters of comparable merchandise (Containers for Compressed or Liquefied Gas of Iron or Steel) during the POI. Further, we note that Respondent provided production data from Ukraine of comparable merchandise, at the six-digit HTSUS level under which scope merchandise would be classified, demonstrating significant production.<sup>36</sup> Because Thailand, Colombia, the Philippines, Indonesia, Ukraine, and South Africa constitute countries that are both economically-comparable to the PRC and significant producers of comparable merchandise, the Department looks to the availability of SV data from these countries to determine whether any of the countries is an appropriate surrogate country.

#### *Data Availability*

Petitioner contends that India is the best choice for the surrogate country because publicly available information from Indian sources is readily available to value the FOPs used to produce identical merchandise.<sup>37</sup> Both Petitioner and Respondent provided publicly available and contemporaneous financial statements for Indian producers of identical and comparable merchandise for which the Department is able to calculate overhead, selling, general, and administrative expenses (“SG&A”), and profit.

Respondent suggests that Ukraine is the best choice for the surrogate country because publicly available information from Ukraine sources is readily available to value the FOPs used

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<sup>36</sup> See *id.*

<sup>37</sup> See Petitioner’s High Pressure Steel Cylinders from the People’s Republic of China; Petitioner’s Comments on Selection of Surrogate Country for Antidumping Investigation, dated September 26, 2011.

to produce steel cylinders.<sup>38</sup> Respondent also contends that there is substantial Ukrainian data for valuing FOPs that are publicly available from the Global Trade Atlas (“GTA”). Respondent also notes that contemporaneous information is available from the International Labor Organization (“ILO”) that will allow the Department to use Ukrainian data to value labor costs. As stated above, both Petitioner and Respondent provided publicly available and contemporaneous financial statements for Indian producers of identical and comparable merchandise for which the Department is able to calculate overhead, SG&A, and profit. Respondent posits that, for all the above reasons, the Department should select Ukraine as the primary surrogate country and India as a secondary surrogate country because Ukraine best satisfies the requirements pursuant to the statute, the regulations, and the Policy Bulletin.

When evaluating SV data, the Department considers several factors including whether the SV data are publicly available, contemporaneous with the POI, represent a broad-market average, from an approved surrogate country, tax- and duty-exclusive, and specific to the input. There is no hierarchy among these criteria. It is the Department’s practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis.<sup>39</sup>

In this case, the record does not contain quality data for Thailand, Colombia, the Philippines, South Africa, or Indonesia. Accordingly, these countries will not be considered for primary surrogate country selection purposes at this time.

The record does contain data from Ukraine.

#### *Surrogate Country Selection*

For this preliminary determination, the Department has selected Ukraine as the primary

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<sup>38</sup> See Respondent’s First Surrogate Value Submission for Beijing Tianhai Industry Co., Ltd.: Antidumping Duty Investigation on High Pressure Steel Cylinders from the People’s Republic of China, dated October 24, 2011.

<sup>39</sup> See Policy Bulletin.

surrogate country for valuing BTIC's FOPs. We recognize that Petitioner has challenged the validity of the Ukrainian data for the valuation of blooms and seamless pipes, particularly with respect to its carbon level. We acknowledge that the Ukrainian SV for steel contains a carbon level that is outside the range for the production of *identical* merchandise; however, it is within the range for the production of *comparable* merchandise. Furthermore, we note that the Indian HTS categories which Petitioner suggests for valuing blooms and tubes are for basket categories that covers a wide range of alloys with numerous elements. The only difference between the Ukrainian HTS and the Respondent's input is a certain amount of carbon, which we have no reason to expect to have a significant effect on value. Therefore, we find that Ukraine satisfies the Department's selection criteria: (1) it is economically comparable with the PRC; (2) it is a significant producer of comparable merchandise; and (3) the data required to value BTIC's FOPs are both available on the record and reliable.

The Department has not selected India as the primary surrogate country as argued by Petitioner. As we have stated in a recent preliminary determination, "unless we find that all of the countries determined to be equally economically comparable, are not significant producers of comparable merchandise, do not provide a reliable source of publicly available surrogate data or are unsuitable for use for other reasons, we will rely on data from one of these countries."<sup>40</sup> In this instance, we find that Ukraine does satisfy the Department's criteria for the selection of a primary surrogate country, and as such, resort to an alternative surrogate country which is not as economically comparable to the PRC as the countries on the Surrogate Country List, is not warranted.

The Department normally uses SV data which are from a country that is economically comparable to the NME and a significant producer of identical or comparable merchandise, and

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<sup>40</sup> See Steel Wheels.

which are on the record and are not otherwise unsuitable for use. However, in exceptional circumstances, the Department may be required to include surrogate value information from a country which is not as economically comparable as those countries on the Surrogate Country List when the only data available on the record of the proceeding is from such a country. The record of this investigation contains no financial statements for producers of identical or comparable merchandise from Ukraine or any of the other countries found to be economically comparable to the PRC and a significant producer of identical or comparable merchandise. Therefore, the Department has preliminarily determined to use the financial statement from Everest Kanto Cylinders Ltd., an Indian producer of identical and comparable merchandise, for calculating the surrogate financial and SG&A ratios, as this is the only contemporaneous financial statement on the record of this investigation. A detailed explanation of the SVs is provided below in the “Normal Value” section of this notice.

In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in an antidumping duty investigation, interested parties may submit publicly available information to value the FOPs within 40 days after the date of publication of the preliminary determination.<sup>41</sup>

### Targeted Dumping

#### *Targeted Dumping Allegations*

The statute allows the Department to employ an alternative dumping margin calculation methodology in an AD investigation under the following circumstances: (1) there is a pattern of export prices (“EP”) or constructed export prices (“CEP”) for comparable merchandise that

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<sup>41</sup> In accordance with 19 CFR 351.301(c)(1), for the final determination of this investigation, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by any other interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative surrogate value information. See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part, 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum (“Glycine Final”) at Comment 2.

differ significantly among purchasers, regions, or periods of time; and (2) the Department explains why such differences cannot be taken into account using the standard average-to-average or transaction-to-transaction methodology.<sup>42</sup>

On October 14, 2011, the Department received Petitioner's allegations of targeted dumping by BTIC using the Department's targeted dumping test as established in Steel Nails.<sup>43</sup> In its allegations, Petitioner asserted that there are patterns of U.S. sales prices for comparable merchandise that differ significantly during a certain time period. On November 22, 2011, Petitioner amended its targeted dumping allegation in response to the revised U.S. sales data submitted by BTIC.

#### *Targeted Dumping Test*

We conducted a time-period targeted dumping analysis for BTIC using the methodology we adopted in Steel Nails and most recently articulated in Wood Flooring.<sup>44</sup> The methodology we employed involves a two-stage test; the first stage addresses the pattern requirement and the second stage addresses the significant-difference requirement.<sup>45</sup> In this test, we made all price comparisons on the basis of identical merchandise (*i.e.*, by control number or CONNUM). We based all of our targeted dumping calculations on the U.S. net price, which we determined for U.S. sales by BTIC in our standard margin calculations.

#### *Price Comparison Method*

The Department preliminarily has found a pattern of prices for comparable merchandise that differs significantly by time period (*i.e.*, targeted dumping). In doing so, the Department

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<sup>42</sup> See section 777A(d)(1)(B) of the Act.

<sup>43</sup> See Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value, 73 FR 33985 (June 16, 2008) ("Steel Nails") and accompanying Issues and Decision Memorandum at Comments 1-9; see also Proposed Methodology for Identifying and Analyzing Targeted Dumping in Antidumping Investigations: Request for Comment, 73 FR 26371 (May 9, 2008).

<sup>44</sup> See Steel Nails; see also Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 76 FR 64318 (October 18, 2011) ("Wood Flooring") and accompanying Issues and Decision Memorandum at Comment 4.

<sup>45</sup> See Steel Nails, and accompanying Issues and Decision Memorandum at Comments 3 and 6; and Wood Flooring, and accompanying Issues and Decision Memorandum at Comment 4.

finds that the pattern of price differences identified cannot be taken into account using the standard average-to-average (“A-T-A”) methodology because the A-T-A methodology conceals differences in price patterns between the targeted and non-targeted groups by averaging low-priced sales to the targeted group with high-priced sales to the non-targeted group.<sup>46</sup> Thus, the Department finds, pursuant to section 777A(d)(1)(B) of the Act, that application of the standard A-T-A comparison methodology would result in the masking of dumping that is unmasked by application of the alternative average-to-transaction (“A-T-T”) comparison method to all of BTIC’s U.S. sales. Accordingly, for this preliminary determination we have applied the alternative A-T-T methodology to all U.S. sales that BTIC reported.<sup>47</sup>

#### Affiliations and Single Entity Determinations

Section 771(33) of the Act provides that:

The following persons shall be considered to be “affiliated” or “affiliated persons”:

- (A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.
- (B) Any officer or director of an organization and such organization.
- (C) Partners.
- (D) Employer and employee.
- (E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.
- (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.
- (G) Any person who controls any other person and such other person.

Additionally, section 771(33) of the Act stipulates that: “For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.”

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<sup>46</sup> See Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 59217 (September 27, 2010) and accompanying Issues and Decision Memorandum at Comment 3; see also Wood Flooring, and accompanying Issues and Decision Memorandum at Comment 4.

<sup>47</sup> See Wood Flooring, and accompanying Issues and Decision Memorandum at Comment 4, and Memorandum to the File, through Matthew Renkey, Acting Program Manager, Office 9, from Alan Ray, Analysis of the Preliminary Determination of the Antidumping Duty Investigation of High Pressure Steel Cylinders from the People’s Republic of China (“PRC”): Beijing Tianhai Industry Co., Ltd. (“BTIC”), dated December 7, 2011 (“BTIC’s Prelim Analysis Memo”).



Finally, according to 19 CFR 351.401(f)(1) and (2), two or more companies may be treated as a single entity for antidumping duty purposes if: (1) the producers are affiliated, (2) the producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (3) there is a significant potential for manipulation of price or production.<sup>48</sup>

#### *BTIC*

The record of this investigation demonstrates that BTIC, a producer and exporter of steel cylinders is affiliated with American Fortune Company (“American Fortune”), Langfang Tianhai High Pressure Container Co., Ltd. (“Langfang Tianhai”) and Tianjin Tianhai High Pressure Container Co., Ltd. (“Tianjin Tianhai”), pursuant to sections 771(33)(A) and (F) of the Act, based on ownership and common control. American Fortune is a U.S. company involved in the sale and distribution of the subject merchandise, and Langfang Tianhai and Tianjin Tianhai are both PRC producers of steel cylinders. Evidence of this affiliation was provided by BTIC in its questionnaire responses, as well as ownership/affiliation charts, organization charts, and business licenses/certificates of approval submitted by all four companies, which are business proprietary data.<sup>49</sup> Additionally, BTIC has claimed throughout its numerous questionnaire responses that it is affiliated with American Fortune, Langfang Tianhai and Tianjin Tianhai, pursuant to the Department’s regulations and the statute. Finally, the companies share common board members or managers.<sup>50</sup> As such, there is significant potential for manipulation of price or production. Therefore, we preliminarily determine that BTIC, American Fortune, Langfang Tianhai, and Tianjin Tianhai are affiliated within the meaning of sections 771(33)(A) and (F) of the Act.

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<sup>48</sup> See 19 CFR 351.401(f)(1) and (2).

<sup>49</sup> See BTIC’s Section A Response for Beijing Tianhai Industry Co., Ltd. Antidumping Duty Investigation on High Pressure Steel Cylinders from the People’s Republic of China exhibits 11 and 13, dated August 26, 2011; see also BTIC’s Supplemental Section A Response for Beijing Tianhai Industry Co., Ltd.: Antidumping Duty Investigation on High Pressure Steel Cylinders from the People’s Republic of China, dated October 13, 2011 (“BTIC’s supplemental section A response”), at 3 through 5.

<sup>50</sup> See id.

Furthermore, we find that BTIC, Langfang Tianhai, and Tianjin Tianhai should be considered as a single entity for purposes of this investigation.<sup>51</sup> In addition to being affiliated, they all have production facilities for similar or identical products that would not require substantial retooling and there is a significant potential for manipulation of production based on the level of common ownership and control, shared management, and an intertwining of business operations.<sup>52</sup>

Because the Department finds that BTIC, Langfang Tianhai, and Tianjin Tianhai are a single entity, the Department is utilizing the aggregate FOP database BTIC provided for purposes of the preliminary determination, which includes the FOPs used by BTIC, Langfang Tianhai and Tianjin Tianhai.

#### Separate Rates

In proceedings involving NME countries, there is a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single AD rate.<sup>53</sup> It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.<sup>54</sup> However, if the Department determines that a company is wholly foreign-owned or located in a ME country, then a separate rate analysis is not necessary to determine whether that company is independent from government control.<sup>55</sup>

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<sup>51</sup> See 19 CFR 351.401(f).

<sup>52</sup> See 19 CFR 351.401(f)(1) and (2); see BTIC's supplemental section A response, at 3 through 5.

<sup>53</sup> See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 55039, 55040 (September 24, 2008) ("PET Film").

<sup>54</sup> See, e.g., Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China, 56 FR 20588 (May 6, 1991) ("Sparklers") as amplified by Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China, 59 FR 22585 (May 2, 1994) ("Silicon Carbide"), and 19 CFR 351.107(d).

<sup>55</sup> See, e.g., PET Film.

In the Initiation Notice, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME investigations.<sup>56</sup> The process requires exporters and producers to submit a separate rate status application.<sup>57</sup>

We have considered whether each PRC company that submitted a complete separate rate application, or a complete section A questionnaire response as a mandatory respondent, is eligible for a separate rate. Because the Separate Rate Respondents and BTIC have all stated that they are either joint ventures between Chinese and foreign companies, or are wholly Chinese-owned companies, the Department must analyze whether these companies can demonstrate that they are sufficiently independent through the absence of both de jure and de facto governmental control over export activities.

1. Absence of De Jure Control

The evidence provided by Respondent and the Separate Rate Respondents supports a preliminary finding of de jure absence of governmental control based on the following factors articulated in Sparklers: 1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; 2) applicable legislative enactments decentralizing control of the companies; and 3) other formal measures by the government decentralizing control of companies, i.e., each Separate Rate Respondents' and mandatory respondent's response, dated August 4, 2011, through August 26, 2011, where each individually-reviewed or separate-rate respondent stated that it had no relationship with any level of the PRC government with respect

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<sup>56</sup> See Initiation Notice.

<sup>57</sup> See Policy Bulletin 05.1: Separate Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, (April 5, 2005), ("Policy Bulletin 05.1") available at <http://ia.ita.doc.gov>. Policy Bulletin 05.1 states, at 6: "{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise *both* exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation." (emphasis added).

to ownership, internal management, and business operations.

## 2. Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to de facto governmental control of its export functions: 1) whether the export prices are set by or are subject to the approval of a governmental agency; 2) whether the respondent has authority to negotiate and sign contracts and other agreements; 3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and 4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.<sup>58</sup> The Department has determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

We determine that, for BTIC and the Separate Rate Respondents, the evidence on the record supports a preliminary finding of de facto absence of governmental control based on record statements and supporting documentation showing the following: 1) each exporter sets its own export prices independent of the government and without the approval of a government authority; 2) each exporter retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; 3) each exporter has the authority to negotiate and sign contracts and other agreements; and 4) each exporter has autonomy from the government regarding the selection of management.<sup>59</sup>

The evidence placed on the record of this investigation by the mandatory respondent and the Separate Rate Respondents demonstrates an absence of de jure and de facto government control with respect to each of the exporter's exports of the merchandise under investigation, in

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<sup>58</sup> See Silicon Carbide, 59 FR at 22586-87; see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China, 60 FR 22544, 22545 (May 8, 1995).

<sup>59</sup> See, e.g., each Separate Rate Respondent's applications submitted between August 4, 2011, and August 26, 2011.

accordance with the criteria identified in Sparklers and Silicon Carbide. As a result, we have preliminarily determined that it is appropriate to grant the Separate Rate Respondents a margin based on the experience of the Respondent.

The separate rate is normally determined based on the weighted-average of the estimated dumping margins established for exporters and producers individually investigated, excluding zero and de minimis margins or margins based entirely on adverse facts available (“AFA”).<sup>60</sup> In this investigation BTIC has an estimated weighted-average dumping margin which is above de minimis and which is not based on total AFA. Therefore, because there is only one relevant weighted-average dumping margin for this final determination, we will use the weighted-average of BTIC’s calculated AD margin using the alternative methodology, which is 5.08 percent.

#### Application of Adverse Facts Available, the PRC-Wide Entity and PRC-Wide Rate

Information on the record of this investigation indicates that there were more exporters of steel cylinders from the PRC than those indicated in the response to our request for Q&V information during the POI.<sup>61</sup> As stated above, we issued our request for Q&V information to ten potential PRC producers/exporters of steel cylinders. While information on the record of this investigation indicates that there are other producers/exporters of steel cylinders in the PRC, we received only two timely-filed solicited Q&V responses. In addition, as noted above, we also received two timely-filed, unsolicited Q&V responses, which we considered for respondent selection purposes. Although all producers/exporters were given an opportunity to provide Q&V information, not all producers/exporters provided a response to the Department’s Q&V letter.<sup>62</sup>

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<sup>60</sup> See section 735(c)(5)(A) of the Act.

<sup>61</sup> See Respondent Selection Memo.

<sup>62</sup> The following eight companies were not responsive to the Department’s request for Q&V information: Shanghai High Pressure Container Co., Ltd.; Heibei Baigong Industrial Co., Ltd.; Nanjing Ocean High-Pressure Vessel Co., Ltd.; Qingdao Baigong Industrial and Trading Co., Ltd.; Shandong Huachen High Pressure Vessel Co., Ltd.; Shandong Province Building High Pressure Vessel Limited Company; Sichuan Mingchuan Chengyu Co., Ltd. and; Zhuolu High Pressure Vessel Co., Ltd.

Therefore, the Department has preliminarily determined that there were PRC producers/exporters of steel cylinders during the POI that did not respond to the Department's request for information. We have treated these PRC producers/exporters, as part of the PRC-wide entity because they did not qualify for a separate rate.<sup>63</sup> For a detailed discussion, see the "Separate Rate" section above.

Section 776(a)(2) of the Act provides that, if an interested party: (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the antidumping statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Information on the record of this investigation indicates that the PRC-wide entity was unresponsive to the Department's requests for information. Specifically, certain companies did not respond to our questionnaires requesting Q&V information. As a result, pursuant to section 776(a)(2)(A) of the Act, we find that the use of FA is appropriate to determine the PRC-wide rate.<sup>64</sup>

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information.<sup>65</sup> We

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<sup>63</sup> See, e.g., Prestressed Concrete Steel Wire Strand From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, 74 FR 68232, 68236 (December 23, 2009) ("PC Strand Prelim") unchanged in Prestressed Concrete Steel Wire Strand From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 28560 (May 21, 2010); see also Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Preliminary Partial Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China, 70 FR 77121, 77128 (December 29, 2005), unchanged in Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China, 71 FR 29303 (May 22, 2006).

<sup>64</sup> See PC Strand Prelim, 74 FR at 68236.

<sup>65</sup> See also Statement of Administrative Action accompanying the Uruguay Round Agreements Act ("URAA"), H.R. Doc. 103-316, 870 (1994) ("SAA"); Notice of Final Determination of Sales at Less Than Fair Value: Certain

find that, because the PRC-wide entity did not respond to our requests for information, it has failed to cooperate to the best of its ability. Therefore, the Department preliminarily finds that, in selecting from among the FA, an adverse inference is appropriate.

When employing an adverse inference, section 776(b) of the Act indicates that the Department may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. The Department's practice, when selecting an AFA rate from among the possible sources of information, has been to ensure that the margin is sufficiently adverse "as to effectuate the statutory purposes of the AFA rule to induce respondents to provide the Department with complete and accurate information in a timely manner."<sup>66</sup> As guided by the SAA, the information used as AFA should ensure an uncooperative party does not benefit by failing to cooperate than if it had cooperated fully.<sup>67</sup> It is the Department's practice to select, as AFA, the higher of the: (a) highest margin alleged in the petition; or (b) the highest calculated rate of any respondent in the investigation.<sup>68</sup> As AFA, we have preliminarily assigned a rate of 26.23 percent to the PRC-wide entity, the highest transaction-specific rate calculated for BTIC.<sup>69</sup> In this instance, for the reasons discussed below, we believe that it is a reasonable exercise of the Department's discretion to select an AFA rate based on data in the investigation, instead of relying on secondary information.

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Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation, 65 FR 5510, 5518 (February 4, 2000).

<sup>66</sup> See Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil, 67 FR 55792, 55796 (August 30, 2002); see also Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909, 8932 (February 23, 1998).

<sup>67</sup> See SAA at 870.

<sup>68</sup> See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China, 71 FR 77373, 77377 (December 26, 2006), unchanged in Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China, 72 FR 19690 (April 19, 2007).

<sup>69</sup> See Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Final Results and Final Rescission in Part of Antidumping Duty Administrative Review, 74 FR 66620 (December 16, 2009), and accompanying Issues and Decision Memorandum at Comment 1.

In selecting this particular transaction-specific margin to use as the AFA rate, the Department analyzed the underlying transaction resulting in the 26.23 percent dumping margin and affirmed that this rate is neither unusual in terms of transaction quantities nor otherwise aberrational.<sup>70</sup> Some of this analysis includes business proprietary information and, as a result, is contained in BTIC's Prelim Analysis Memo, at Attachment 4. In summary, our review of BTIC's individual transaction margins affirms that this rate is not unusual in terms of transaction quantities – there are significant numbers of sales with quantities similar to that in the underlying transaction.<sup>71</sup> The fact that BTIC has a number of other transaction-specific margins very close to its highest transaction-specific margin of 26.23 percent further demonstrates that this margin is not aberrational.<sup>72</sup> The rate is otherwise reasonable because it represents an actual rate at which a cooperating respondent sold the subject merchandise during the POI. When the AFA rate is based upon sales from the POI, it is supported by substantial evidence.<sup>73</sup> If during the POI, the cooperating respondent sold the subject merchandise at the rate the Department selected, the Department may reasonably determine that an uncooperative respondent could have made all of its sales at the same rate. Therefore, we have determined that BTIC's transaction-specific margin of 26.23 percent, based on data in the current investigation, is not aberrational and is a reasonable AFA rate for the PRC-wide entity for this preliminary determination. The PRC-wide entity rate applies to all entries of steel cylinders except for entries from BTIC and the three other producers/exporters receiving a separate rate.

#### Date of Sale

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<sup>70</sup> See, e.g., Certain Lined Paper Products from India: Notice of Final Results of Antidumping Duty Administrative Review, 75 FR 7563 (February 22, 2010) and the accompanying Issues and Decision Memorandum; Hyundai Elec. Indus. Co., Ltd. v United States, 395 F. Supp. 2d 1231, 1235-36 (Ct. Int'l Trade 2005); F.lli Di Cecco Di Filippo Fara S. Martino S.p.A v. United States, 216 F.3d 1027, 1032 (Fed. Cir 2000).

<sup>71</sup> See id.

<sup>72</sup> See id. at 81-82.

<sup>73</sup> See Shanghai Taoen Int'l Trading Co. v. United States, 360 F. Supp. 2d 1339, 1348 (Ct. Int'l Trade 2005).



19 CFR 351.401(i) states that, “{i}n identifying the date of sale of the merchandise under consideration or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer’s records kept in the ordinary course of business.” Additionally, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.<sup>74</sup> The Court of International Trade (“CIT”) has stated, “a party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to “‘satisfy’ the Department that ‘a different date better reflects the date on which the exporter or producer establishes the material terms of sale.’”<sup>75</sup> The date of sale is generally the date on which the parties agree upon all substantive terms of the sale. This normally includes the price, quantity, delivery terms and payment terms.<sup>76</sup>

*A. EP*

BTIC reported its date of sale based on the date BTIC issued an invoice to the unaffiliated United States customer. No information on the record demonstrated that some other date better reflected the date on which the material terms of sale were established. Therefore, consistent with 19 CFR 351.401(i), the Department has preliminary determined that the invoice date should be used as the date of sale for EP sales.<sup>77</sup> For the final results, the Department intends to seek additional information concerning the date of sale of BTIC’s EP sales.

*B. CEP*

BTIC reported that the date of sale was determined by the contract signed between its

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<sup>74</sup> See 19 CFR 351.401(i); see also Allied Tube & Conduit Corp. v. United States, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)) (“Allied Tube”).

<sup>75</sup> See Allied Tube, 132 F. Supp. 2d at 1090-1092.

<sup>76</sup> See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Turkey, 65 FR 15123 (March 21, 2000) and accompanying Issues and Decision Memorandum at Date of Sale, Comment 1.

<sup>77</sup> See BTIC’s Section A Response for Beijing Tianhai Industry Co., Ltd. Antidumping Duty Investigation on High Pressure Steel Cylinders from the People’s Republic of China at page 21, dated August 26, 2011.

affiliated importer<sup>78</sup> and its unaffiliated U.S. customer and provided evidence confirming that the contract date was in fact the date of sale for CEP sales, as the material terms of sale were set at that time. Therefore, the Department has preliminarily determined that BTIC met its burden to establish that contract date, rather than invoice date, should be used as the date of sale for CEP sales.

#### Fair Value Comparisons

To determine whether sales of steel cylinders to the United States by BTIC were made at LTFV, we compared EPs and/or CEPs to NV, as described in the “U.S. Price,” and “Normal Value” sections of this notice. Specifically, we compared NV to weighted-average EPs and/or CEPs in accordance with section 777A (d)(1) of the Act.

#### U.S. Price

##### *A. EP*

In accordance with section 772(a) of the Act, we based the U.S. price for certain BTIC sales on EP because the first sale to an unaffiliated purchaser was made prior to importation, and the use of CEP was not otherwise warranted. We calculated EP based on the packed prices to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for any movement expenses (e.g., foreign inland freight from the plant to the port of exportation, domestic brokerage, etc.) in accordance with section 772(c)(2)(A) of the Act. We based these movement expenses on SVs where a PRC company provided the service and was paid in Renminbi (“RMB”) (see “Factor Valuation Methodology” section below for further discussion).<sup>79</sup>

##### *B. CEP*

In accordance with section 772(b) of the Act, we based the U.S. price for some of BTIC’s

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<sup>78</sup> American Fortune.

<sup>79</sup> For details regarding our EP calculations, see BTIC’s Prelim Analysis Memo.

sales on CEP because certain sales to an unaffiliated customer were made by this respondent's respective U.S. affiliate.<sup>80</sup> In accordance with section 772(a) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d) of section 772 of the Act. In accordance with section 772(a) of the Act, we used CEP for a portion of BTIC's U.S. sales because the first sale to an unaffiliated customer was made by BTIC's U.S. affiliate.

We calculated CEP for BTIC based on delivered prices to unaffiliated purchasers in the United States. We made deductions from the U.S. sales price, where applicable, for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included such expenses as foreign inland freight from the plant to the port of exportation, international freight, marine insurance, other U.S. transportation, U.S. customs duty, U.S. inland freight from port to the warehouse, and U.S. inland freight from the warehouse to the customer. In accordance with section 772(d)(1) of the Act, the Department deducted credit expenses, inventory carrying costs and indirect selling expenses from the U.S. price, all of which relate to commercial activity in the United States. In addition, pursuant to section 772(d)(3) of the Act, we made an adjustment to the starting price for CEP profit. We based movement expenses on either SVs if the expense was paid to an NME company in RMB, actual expenses, or an average of the two.<sup>81</sup>

#### Normal Value

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<sup>80</sup> Respondent reported that its respective affiliate in the United States performed sales functions such as: sales negotiation, issuance of invoices and receipt of payment from the ultimate U.S. customer during the POI, citing Glycine From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Rescission, in Part, 72 FR 18457 (April 12, 2007) unchanged in Glycine Final (where the Department stated that "we based U.S. price for certain sales on CEP in accordance with section 772(b) of the Act, because sales were made by Nantong Donchang's U.S. affiliate, Wavort, Inc. {"Wavort"} to unaffiliated purchasers.").

<sup>81</sup> For details regarding our CEP calculations, see BTIC's Prelim Analysis Memo. See also Memorandum to the File, through Matthew Renkey, Acting Program Manager, Office 9, through Emeka Chukwudebe, Antidumping Duty Investigation of High Pressure Steel Cylinders from the People's Republic of China ("PRC"): Surrogate Values ("SVs") for the Preliminary Determination ("Prelim SV Memo").

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOP because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.<sup>82</sup>

#### Factor Valuation Methodology

In accordance with section 773(c) of the Act, we calculated NV based on FOP data reported by BTIC for the POI. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available SVs (except as discussed below). In selecting the SVs, among other criteria, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Ukrainian SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in Sigma Corp. v. United States, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997).<sup>83</sup>

For this preliminary determination, we used Ukrainian import statistics to calculate SVs for the mandatory respondent's FOPs (direct materials, including steel tubes, steel billets, and certain energy FOPs, and packing materials). In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, SVs which are non-export average values, most

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<sup>82</sup> See, e.g., Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People's Republic of China, 71 FR 19695 (April 17, 2006), unchanged in Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, in Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006).

<sup>83</sup> A detailed description of all SVs used can be found in the Prelim SV Memo.

contemporaneous with the POI, product-specific, and tax-exclusive.<sup>84</sup>

Furthermore, with regard to the Ukrainian import-based SVs, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, India, Thailand and South Korea may have been subsidized because we have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies.<sup>85</sup> Therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.<sup>86</sup> Further, guided by the legislative history, it is the Department's practice not to conduct a formal investigation to ensure that such prices are not subsidized.<sup>87</sup> Rather, the Department bases its decision on information that is available to it at the time it makes its determination. Additionally, consistent with our practice, we disregarded prices from NME countries and excluded imports labeled as originating from an "unspecified" country from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.<sup>88</sup> Therefore, we have not used prices from these countries either in calculating the

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<sup>84</sup> See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam, 69 FR 42672, 42683 (July 16, 2004), unchanged in Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam, 69 FR 71005 (December 8, 2004).

<sup>85</sup> See, e.g., Certain Cut-to-Length Carbon Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review, 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum at 4; Carbazole Violet Pigment 23 from India: Expedited Five-year (Sunset) Review of the Countervailing Duty Order, 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at 4-5; Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19-20; Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand, 66 FR 50410 (October 3, 2001), and accompanying Issues and Decision Memorandum at 23.

<sup>86</sup> See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China, 69 FR 20594 (April 16, 2004) and accompanying Issues and Decision Memorandum at Comment 7.

<sup>87</sup> See Conference Report, at 590; see also Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China, 72 FR 30758 (June 4, 2007), unchanged in Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China, 72 FR 60632 (October 25, 2007).

<sup>88</sup> See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates From the People's Republic of China, 69 FR 75294, 75301 (December 16, 2004), unchanged in Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China, 70 FR 24502 (May 10, 2005).

Ukrainian import-based SVs or in calculating ME input values.<sup>89</sup>

Previously, the Department used regression-based wages that captured the worldwide relationship between per capita GNI and hourly manufacturing wages, pursuant to 19 CFR 351.408(c)(3), to value the respondent's cost of labor. However, on May 14, 2010, the Court of Appeals for the Federal Circuit ("CAFC"), in Dorbest Ltd. v. United States, 604 F.3d 1363, 1372 (Fed. Cir. 2010) ("Dorbest"), invalidated 19 CFR 351.408(c)(3). As a consequence of the CAFC's ruling in Dorbest, the Department no longer relies on the regression-based wage rate methodology described in its regulations.

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME antidumping proceedings.<sup>90</sup> In Labor Methodologies, the Department explained that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country.<sup>91</sup> Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (ILO) Yearbook of Labor Statistics (Yearbook).<sup>92</sup> There are no Chapter 6A labor data available for Ukraine, pertaining to the industry specific to subject merchandise. In Labor Methodologies, the Department explained that, "if there is no industry-specific data available for the surrogate country within the primary data source, i.e., ILO Chapter 6A data, the Department will then look to national data for the surrogate country for calculating the wage rate."<sup>93</sup> The latest year for which ILO Chapter 6A reports national data for Ukraine is 2006. The most current and publicly available national data for industrial wages in Ukraine is reported, however, by the State Statistics Service of Ukraine, a government entity, at <http://www.ukrstat.gov.ua/>. We find that this information constitutes the best available

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<sup>89</sup> See id.

<sup>90</sup> See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, 76 FR 36092 (June 21, 2011) ("Labor Methodologies").

<sup>91</sup> See Labor Methodologies, 76 FR at 36093.

<sup>92</sup> See Labor Methodologies, 76 FR at 36093-36094.

<sup>93</sup> See id. at 36094 n.11.

information on the record because it is contemporaneous with the POR and, thus, more accurately reflective of actual wages in Ukraine.

Therefore, for the preliminary determination, we calculated the labor inputs using the data for average monthly industrial wages prevailing during the POI in Ukraine, corresponding to “Manufacturing” economic sector. For the preliminary determination, the calculated industry-specific wage rate is 13.09 UAH/hour. Because these data do not reflect the indirect costs reflected in Chapter 6A data, we find that the facts and information on the record do not warrant or permit an adjustment to the surrogate financial statements.<sup>94</sup> A more detailed description of the wage rate calculation methodology is provided in the Prelim SV Memo.

To value factory overhead, selling, general, and administrative expenses, and profit, we relied on the unconsolidated financial statement from Everest Kanto Cylinders Ltd., a producer of identical merchandise located in India. While India is not the primary surrogate country, this financial statement is the only one from a producer of comparable or identical merchandise on the record, and is contemporaneous with the POI. For further details regarding the calculation of the surrogate financial ratios, see the Prelim SV Memo.

#### Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

#### Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information upon which we will rely in making our final determination.

#### Combination Rates

In the Initiation Notice, the Department stated that it would calculate combination rates

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<sup>94</sup> See id. at 36094.

for certain respondents that are eligible for a separate rate in this investigation.<sup>95</sup>

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<sup>95</sup> See Initiation Notice; Policy Bulletin 05.1.



### Preliminary Determination

The weighted-average dumping margins are as follows:

Exporter	Producer	Weighted-Average Margin
Beijing Tianhai Industry Co., Ltd.	Langfang Tianhai High Pressure Container Co., Ltd.	5.08 percent
Beijing Tianhai Industry Co., Ltd.	Tianjin Tianhai High Pressure Container Co., Ltd.	5.08 percent
Beijing Tianhai Industry Co., Ltd.	Beijing Tianhai Industry Co., Ltd.	5.08 percent
Shanghai J.S.X. International Trading Corporation	Shanghai High Pressure Special Gas Cylinder Co., Ltd.	5.08 percent
Zhejiang Jindun Pressure Vessel Co., Ltd.	Zhejiang Jindun Pressure Vessel Co., Ltd.	5.08 percent
Shijiazhuang Enric Gas Equipment Co., Ltd.	Shijiazhuang Enric Gas Equipment Co., Ltd.	5.08 percent
PRC-Wide Rate <sup>96</sup>		26.23 percent

### Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

### Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct CBP to suspend liquidation of all entries of steel cylinders from the PRC as described in the “Scope of Investigation” section, entered, or withdrawn from warehouse, for consumption from BTIC, the Separate-Rate Respondents, and the PRC-wide entity on or after the date of publication of this notice in the Federal Register. Additionally, we will instruct CBP to require an antidumping cash deposit or the posting of a bond for each entry equal to the weighted-average amount by which the NV exceeds U.S. price, as indicated above.<sup>97</sup>

<sup>96</sup> The PRC-Wide entity includes: Shanghai High Pressure Container Co., Ltd.; Heibei Baigong Industrial Co., Ltd.; Nanjing Ocean High-Pressure Vessel Co., Ltd.; Qingdao Baigong Industrial and Trading Co., Ltd.; Shandong Huachen High Pressure Vessel Co., Ltd.; Shandong Province Building High Pressure Vessel Limited Company; Sichuan Mingchuan Chengyu Co., Ltd. and; Zhuolu High Pressure Vessel Co., Ltd.

<sup>97</sup> See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 From

We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds U.S. price, as follows: (1) The rate for the exporter/producer combinations listed in the chart above will be the rate we have determined in this preliminary determination; (2) for all PRC exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the PRC-wide rate; and (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter. These suspension of liquidation instructions will remain in effect until further notice.

#### International Trade Commission Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our preliminary affirmative determination of sales at less than fair value. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of steel cylinders, or sales (or the likelihood of sales) for importation, of the steel cylinders within 45 days of our final determination.

#### Public Comments

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date on which the final verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs. See 19 CFR 351.309. A table of contents, list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

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India, 69 FR 67306, 67307 (November 17, 2007).

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Interested parties, who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, filed electronically using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System ("IA ACCESS"). An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Standard Time (ET) within 30 days after the date of publication of this notice. See 19 CFR 351.310(c). Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a time and location to be determined. See 19 CFR 351.310. Parties should confirm by telephone the date, time, and location of the hearing.

We will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

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Christian Marsh  
Acting Assistant Secretary  
for Import Administration

December 7, 2011 \_\_\_\_\_  
Date